


PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 6296C1/CPI/L/B/PJS	
<p>_____</p> <p>_____</p>	Application Number 10/804,300		Filed March 19, 2004
	First Named Inventor Rosenstein, et al.		
	Art Unit 1763	Examiner Karla A. Moore	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <div style="text-align: right; margin-top: 20px;">  Signature </div> <div style="margin-top: 10px;"> <input type="checkbox"/> I am the applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/95) <input type="checkbox"/> attorney or agent of record. Registration number _____ <input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number <u>45,150</u> </div> <div style="text-align: right; margin-top: 10px;"> <u>Keith Taboada, Esq.</u> Typed or printed name <u>(732) 530-9404</u> Telephone number <u>Jan 5, 2007</u> Date </div>			
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.			

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IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

Applicants: **Rosenstein, et al.**

Case: **6296C1/CPI/L/B/PJS**

Serial No.: **10/804,300**

Filed: **March 19, 2004**

Examiner: **Moore, Karla A.**

Group Art Unit: **1763**

Confirmation No.: **7840**

Title: **MOTORIZED CHAMBER LID**

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S I R:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In conjunction with the Notice of Appeal and the Pre-Appeal Brief Request for Review (form PTO/SB/33) filed herewith, the Applicants request a Panel review of the Final Rejection in this matter for the reasons stated below. Although the remarks herein are focused on a failure to demonstrate a prima facie case of anticipation due to a clear error in claim, nothing in this paper is meant to limit the scope of any arguments, either factual or legal, that Applicants may later present in a full Appeal Brief.

REASONS FOR REVIEW

The question for review by the Panel is whether U.S. Patent No. 6,565,662 to *Amano et al.* (hereinafter "*Amano*") anticipates a vacuum chamber body and a lid assembly coupled to the chamber body by a hinge, wherein the hinge is coupled to the chamber body and has a fixed axis of rotation relative to the chamber body, and wherein the lid assembly is rotatable about a fixed axis of the hinge between a first position sealing an open upper end of the chamber body and a second position clear of the upper end by a motor coupled to the hinge. The Applicants submit that the prima facie case of anticipation is based on a clear error in claim interpretation, and under a proper interpretation of the claims, *Amano* does not teach or suggest all the elements recited in the claims, and as such, can not support a prima facie case of anticipation under 35 U.S.C. § 102(e).

The standard for claim interpretation during the examination of a patent application by the U.S. Patent and Trademark Office is that "claims ... are to be given their broadest reasonable interpretation consistent with the specification, and ... claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art." Moreover, this interpretation must be consistent with one that would be reached by those skilled in the art. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1365; 70 U.S.P.Q. 2D (BNA) 1827 (Fed. Cir. 2004), citing *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990) and *In re Cortright*, 165 F.3d 1353, 1358 (Fed. Cir. 1999) (emphasis added). In the present examination, the claims have not been interpreted in a manner consistent with the specification, nor in a manner consistent with an interpretation that would be utilized by those skilled in the art.

The claims have been rejected during prosecution under the reasoning that *Amano*, in the embodiment depicted in Figures 1 through 7, teaches a lid coupled to a chamber body by a hinge, and that the axis of rotation is fixed relative to the chamber body. The Applicants disagree, as the Examiner's interpretation of a hinge is unreasonably broad, and even if such a broad interpretation is supportable, the asserted "hinge" of *Amano* nonetheless fails to anticipate (*i.e.*, teach) all the claim limitations.

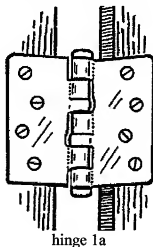
In giving the claims their broadest reasonable interpretation, the interpretation utilized during examination of the application must be consistent with that which one skilled in the art would utilize. In re American Academy of Science Tech Center, 367 F.3d 1365. Here, the Applicants can find no support for the interpretation that a “hinge” is shown in embodiment of *Amano* relied upon by the Examiner. The Examiner states that such an interpretation is supported by Merriam-Webster Online Dictionary (<http://www.m-w.com/dictionary/hinge>), portions of which are copied below.

Main Entry: ¹**hinge**

1 a : a jointed or flexible device on which a door, lid, or other swinging part turns **b** : a flexible ligamentous joint **c** : a small piece of thin gummed paper used in fastening a postage stamp in an album

2 : a determining factor : **TURNING POINT**

The illustration provided by Merriam-Webster is:



In contrast Merriam-Webster definition of a hinge, the apparatus of *Amano*, best depicted in Figures 6A-D, is not **jointed**, nor is the lid (assembly) **swinging**. Moreover,

the asserted “hinge” of *Amano*, as shown below, does not remotely resemble the hinge illustrated by Merriam-Webster.

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Furthermore, the asserted "hinge" of *Amano* can only allow rotation once the lid is vertically raised and linearly slide clear of the chamber body. As such, the lid of *Amano*, coupled to the asserted "hinge", is not rotatable about a fixed axis between a first position sealing an open upper end of a chamber body and a second position clear of the upper end, as recited by claims 1 and 16.

Additionally, the Examiner asserts in paragraph 57 of the Final Office Action, that the claims do not recite a fixed hinge, but a fixed axis of rotation, and that *Amano* meets that limitation. However, even if the apparatus of *Amano* was a hinge, *Amano* does not

teach that the axis of rotation is "fixed" when positioned to rotate the lid, as recited by claim 1 and 16.

Thus, the Applicants submit that the Applicants' interpretation of the claims is consistent with an interpretation of those skilled in the art, and as such, apparatus of Figures 3-7 of *Amano* cannot be read to describe the structure as claimed by the Applicants. Therefore, the claims have not been interpreted in a manner consistent with a hinge described in the specification, and as would be interpreted by one in ordinary skill in the art, as required by *In re American Academy of Science Tech Center*.

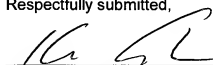
Thus, the interpretation of the claims is in clear error, and as such, the references of record do not teach or suggest a hinge coupled to a vacuum chamber body and having a fixed axis of rotation relative to the chamber body, and a lid assembly coupled to the chamber body by the hinge, the lid assembly rotatable about the fixed axis of the hinge between a first position sealing the open upper end and a second position clear of the upper end, as recited by claims 1; or a hinge coupled to a chamber body and having an axis of rotation disposed at a fixed location outward of the chamber body, a lid assembly disposed at a radial distance to the axis of the hinge, the lid assembly rotatable about the axis of the hinge between a first position sealing the open upper end and a second position clear of the upper end, as recited by claim 16. As such, a *prima facie* case of anticipation has not been demonstrated as all of the claimed elements are not taught by *Amano*.

CONCLUSION

Applicants believe that the foregoing discussion clearly demonstrates the clear error underlying the rejection in this matter. Accordingly, Applicants request that the Panel vacate the rejection and reopen prosecution with instructions to allow the present claims.

Respectfully submitted,

Jan 5, 2007



KEITH TABOADA
Attorney Reg. No. 45,150
Patterson & Sheridan, LLP
Attorney for Applicant(s)